

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

7 KENNETH W. CROSBY,

8 v. Plaintiff,

Case No. 2:18-cv-01554-GMN-GWF

9 CR MEDICAL, LLC., *et al.*,

10 Defendants.

REPORT AND RECOMMENDATION

12 On August 17, 2018 Plaintiff filed the instant lawsuit alleging wrongful denial of benefits
13 under ERISA §502(a)(1)(B). On November 16, 2018 the Court granted Plaintiff's request to
14 extend time to effectuate service for an additional ninety (90) days. ECF No. 10. On March 12,
15 2019 the Court issued a notice of intent to dismiss pursuant to Fed. R. Civ. P. 4(m) and warned
16 Plaintiff that the instant action would be dismissed without prejudice unless proof of service as to
17 all Defendants was filed by April 11, 2019. ECF No. 15. To date, Plaintiff has failed to file his
18 Proof of Service as to all Defendants, in accordance with Fed. R. Civ. P. 4(m) and Local Rules 4-
19 1 and 5-1.

20 Fed. R. Civ. P. 4(m) provides that "if a defendant is not served within 90 days after the
21 complaint is filed, the court... must dismiss the action without prejudice against that defendant or
22 order that service be made within a specific time." This action was filed approximately 287 days
23 ago yet Defendants have not been served. Thus, Plaintiff is in violation of the Fed. R. Civ. P. 4(m).
24 Accordingly,

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IT IS HEREBY RECOMMENDED that this action be **dismissed** without prejudice based on Plaintiff's failure to properly serve Defendants within the time frame set forth in Fed. R. Civ. P. 4(m).

NOTICE

Under Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. Appeals may be waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). Failure to file objections within the specified time or failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

12 || Dated this 31st day of May, 2019.

George Foley Jr.
GEORGE FOLEY, JR.
UNITED STATES MAGISTRATE JUDGE